

Pension Benefit Guaranty Corporation

§ 4221.9

each party may file a reply brief concerning matters contained in the opposing brief. The arbitrator may establish a briefing schedule and may reduce or extend these time limits. Each party shall deliver copies of all of its briefs to the arbitrator and to all opposing parties.

§ 4221.7 Reopening of proceedings.

(a) *Grounds for reopening.* At any time before a final award is rendered, the proceedings may be reopened, on the motion of the arbitrator or at the request of any party, for the purpose of taking further evidence or rehearing or rearguing any matter, if the arbitrator determines that—

(1) The reopening is likely to result in new information that will have a material effect on the outcome of the arbitration;

(2) Good cause exists for the failure of the party that requested reopening to present such information at the hearing; and

(3) The delay caused by the reopening will not be unfairly injurious to any party.

(b) *Comments on and notice of reopening.* The arbitrator shall allow all affected parties the opportunity to comment on any motion or request to reopen the proceedings. If he or she determines that the proceedings should be reopened, he or she shall give all parties written notice of the reasons for reopening and of the schedule of the reopened proceedings.

§ 4221.8 Award.

(a) *Form.* The arbitrator shall render a written award that—

(1) States the basis for the award, including such findings of fact and conclusions of law (which need not be explicitly designated as such) as are necessary to resolve the dispute;

(2) Adjusts (or provides a method for adjusting) the amount or schedule of payments to be made after the award to reflect overpayments or underpayments made before the award was rendered or requires the plan sponsor to refund overpayments in accordance with § 4219.31(d); and

(3) Provides for an allocation of costs in accordance with § 4221.10.

(b) *Time of award.* Except as provided in paragraphs (c), (d), and (e) of this section, the arbitrator shall render the award no later than 30 days after the proceedings close. The award is rendered when filed or served on the parties as provided in § 4221.13. The award is final when the period for seeking modification or reconsideration in accordance with § 4221.9(a) has expired or the arbitrator has rendered a revised award in accordance with § 4221.9(c).

(c) *Reopened proceedings.* If the proceedings are reopened in accordance with § 4221.7 after the close of the hearing, the arbitrator shall render the award no later than 30 days after the date on which the reopened proceedings are closed.

(d) *Absence of hearing.* If the parties have chosen to proceed without a hearing, the arbitrator shall render the award no later than 30 days after the date on which final statements and proofs are filed with him or her.

(e) *Agreement for extension of time.* Notwithstanding paragraphs (b), (c), and (d), the parties may agree to an extension of time for the arbitrator's award in light of the particular facts and circumstances of their dispute.

(f) *Close of proceedings.* For purposes of paragraphs (b) and (c) of this section, the proceedings are closed on the date on which the last brief or reply brief is due or, if no briefs are to be filed, on the date on which the hearing or rehearing closes.

(g) *Publication of award.* After a final award has been rendered, the plan sponsor shall make copies available upon request to the PBGC and to all companies that contribute to the plan. The plan sponsor may impose reasonable charges for copying and postage.

§ 4221.9 Reconsideration of award.

(a) *Motion for reconsideration and objections.* A party may seek modification or reconsideration of the arbitrator's award by filing a written motion with the arbitrator and all opposing parties within 20 days after the award is rendered. Opposing parties may file objections to modification or reconsideration within 10 days after the motion is filed. The filing of a written motion for modification or reconsideration suspends the 30-day period under section

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4221(b)(2) of ERISA for requesting court review of the award. The 30-day statutory period again begins to run when the arbitrator denies the motion pursuant to paragraph (c) of this section or renders a revised award.

(b) *Grounds for modification or reconsideration.* The arbitrator may grant a motion for modification or reconsideration of the award only if—

(1) There is a numerical error or a mistake in the description of any person, thing, or property referred to in the award; or

(2) The arbitrator has rendered an award upon a matter not submitted to the arbitrator and the matter affects the merits of the decision; or

(3) The award is imperfect in a matter of form not affecting the merits of the dispute.

(c) *Decision of arbitrator.* The arbitrator shall grant or deny the motion for modification or reconsideration, and may render an opinion to support his or her decision within 20 days after the motion is filed with the arbitrator, or within 30 days after the motion is filed if an objection is also filed.

§ 4221.10 Costs.

The costs of arbitration under this part shall be borne by the parties as follows:

(a) *Witnesses.* Each party to the dispute shall bear the costs of its own witnesses.

(b) *Other costs of arbitration.* Except as provided in § 4221.6(d) with respect to a transcript of the hearing, the parties shall bear the other costs of the arbitration proceedings equally unless the arbitrator determines otherwise. The parties may, however, agree to a different allocation of costs if their agreement is entered into after the employer has received notice of the plan's assessment of withdrawal liability.

(c) *Attorneys' fees.* The arbitrator may require a party that initiates or contests an arbitration in bad faith or engages in dilatory, harassing, or other improper conduct during the course of the arbitration to pay reasonable attorneys' fees of other parties.

§ 4221.11 Waiver of rules.

Any party that fails to object in writing in a timely manner to any de-

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viation from any provision of this part is deemed to have waived the right to interpose that objection thereafter.

§ 4221.12 Calculation of periods of time.

For purposes of calculating any period of time under this part, the period begins to run on the day following the day that a communication is received or an act is completed. If the last day of the period is a Federal, State, or local holiday or a non-business day for one of the parties or the arbitrator, the period runs until the end of the first business day that follows. Holidays or non-business days occurring during the running of the period of time are included in calculating the period.

§ 4221.13 Filing or service of documents.

(a) *By mail.* A document that is to be filed or served under this part is considered filed or served on—

(1) The date of the receipt provided to the sender by the United States Postal Service, if the document was sent by certified or registered mail, postage prepaid, properly packaged, and properly addressed; or

(2) The date of the United States Postal Service postmark stamped on the cover in which the document is mailed, if paragraph (a)(1) is not applicable, a legible postmark was made, and the document was sent postage prepaid, properly packaged, and properly addressed.

(b) *By means other than mail.* A document required to be delivered under this part that is not mailed in accordance with paragraph (a) of this section is considered filed or served on the date on which it is received.

§ 4221.14 PBGC-approved arbitration procedures.

(a) *Use of PBGC-approved arbitration procedures.* In lieu of the procedures prescribed by this part, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with paragraph (c) of this section. A plan may by plan amendment require the use of a PBGC-approved procedure for all arbitrations of withdrawal liability disputes, or the parties may